

EN BANC

[G.R. NO. 167499, September 15, 2005]

MILES ANDREW MARI ROCES, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND MARIA ZENAIDA B. ANG PING, RESPONDENTS.

D E C I S I O N

PUNO, J.:

If there is a right, there must be a remedy is an old legal adage. The case at bar provides the perfect setting for the application of this adage which is a demand for simple justice. The facts will show how the respondent's right to run for a public office has been frustrated by unscrupulous officials in charge of the sanctity of our electoral process.

Petitioner Miles Roces (Roces) and former Congressman Harry Ang Ping (Mr. Ang Ping) filed their respective certificates of candidacy (COCs) for the position of Representative for the 3rd Congressional District of Manila in the May 2004 elections.

On January 5, 2004, a **registered voter** of Manila named Alejandro Gomez questioned Mr. Ang Ping's candidacy before the COMELEC through a petition to deny due course or cancel his COC.^[1] The petition alleged that Mr. Ang Ping misrepresented himself to be a natural-born citizen, hence was disqualified for the position.

Acting for the COMELEC First Division, Commissioner **Virgilio O. Garcilliano** issued an order on **April 30, 2004** scheduling the **promulgation** of its resolution on **May 5, 2004.**^[2] Two days **before** the scheduled promulgation or on **May 3, 2004**, Mr. Ang Ping filed with the COMELEC a Sworn Declaration of Withdrawal of his COC.^[3] The next day, **May 4, 2004**, the General Counsel for the Nationalist Peoples Coalition, the political party of Mr. Ang Ping, sought that Mr. Ang Ping's wife, Ma. Zenaida Ang Ping (Mrs. Ang Ping), substitute for him.^[4] Mr. Ang Ping also filed a motion to cancel the scheduled promulgation and dismiss the petition to deny due course or cancel his COC on the same date.^[5] On **May 5, 2004**, Commissioner Resurreccion Z. Borra **deferred the promulgation for lack of quorum as he was the sole Commissioner in attendance.**^[6]

Despite all these developments, the COMELEC First Division, **through Commissioners Rufino S.B. Javier, Resurreccion Z. Borra, and Virgilio O. Garcilliano**, issued a **resolution granting the petition to deny due course** to Mr. Ang Ping's COC and ordering the Board of Election Inspectors of Manila not to count any vote cast in his favor.^[7] It ruled that the **resolution** which was **originally scheduled** for promulgation by Commissioner Garcilliano on **May 5**,

2004 was **instead promulgated on April 30, 2004, the same date that the notice of promulgation was issued.**^[8] The resolution was served on Mr. Ang Ping's counsel on **May 8, 2004.**^[9]

Compounding the woes of Mr. Ang Ping, and **despite the deferment of the promulgation by Commissioner Borra at a hearing on May 5, 2004,** the COMELEC First Division issued **on the same date** an **order denying** Mr. Ang Ping's **motion to dismiss.** It held that the motion to dismiss was filed **after** the "**promulgation**" of the **April 30, 2004 resolution** granting the petition to deny due course to Mr. Ang Ping's COC.^[10] On May 9, 2004, **and before the expiration of the five-day reglementary period,**^[11] Mr. Ang Ping moved for reconsideration of the April 30, 2004 resolution and the case was elevated to the COMELEC *en banc.*^[12]

While the case was still with the COMELEC First Division, or on May 8, 2004, the COMELEC *en banc* issued **Resolution No. 6823, declaring moot Mr. Ang Ping's Affidavit of Withdrawal, denying due course to the substitute COC of Mrs. Ang Ping and ordering the Regional Election Director to delete Mr. Ang Ping's name from the certified list of candidates.**^[13] Among the signatories to the Resolution were **Commissioners Javier, Borra, and Garcilliano of the COMELEC First Division** before which the petition to deny due course **was still pending.**^[14] Mr. Ang Ping had no knowledge of the resolution.

Racing against time or on May 11, 2004, the spouses Ang Ping **repaired to this Court** and filed a **petition for certiorari** with prayer for temporary restraining order, status quo order and/or writ of preliminary injunction docketed as G.R. No. 163259, assailing COMELEC Resolution No. 6823.^[15] The next day or on May 12, 2004, this Court issued a resolution requiring Roces to comment and denied the issuance of an order suspending the proclamation.^[16]

On the **election day itself,** the **Manila City Board of Canvassers** resolved not to canvass the votes for Mr. or Mrs. Ang Ping **citing COMELEC Resolution No. 6823.**^[17] On May 15, 2004, after counting only **6,347** votes out of the **150,387 registered voters in the district,** it proclaimed Roces winner.^[18] The spouses Ang Ping appealed the Board resolution to the COMELEC *en banc*^[19] and filed a petition to annul the proclamation^[20] but these were dismissed by COMELEC's Resolution No. 7257 and Omnibus Order of July 6, 2004.^[21]

On May 19, 2004, Roces filed his Comment to the petition of spouses Ang Ping with this Court.^[22] On May 25, 2004, this Court required the spouses Ang Ping to file their consolidated reply to the Comment.^[23]

On May 24, 2004, Mrs. Ang Ping filed an **Election Protest Ad Cautelam** with the House of Representatives Electoral Tribunal (HRET), which was docketed as HRET Case No. 04-004.^[24] In her election protest, Mrs. Ang Ping alleged, among others, that COMELEC Resolution No. 6823 was a "glaring case of deprivation" of Mr. and Mrs. Ang Ping's right to "elevate SPC 04-224 to the Commission *en banc*" and that the COMELEC's April 30, 2004 resolution was irregularly promulgated. Roces filed his

answer alleging, among others, that the HRET has no jurisdiction over the case.^[25]

On July 16, 2004, the spouses Ang Ping filed their consolidated reply with this Court.^[26] On July 27, 2004, we required Mrs. Ang Ping to show cause why the petition in G.R. No. 163259 should not be dismissed in view of the filing and pendency of HRET Case No. 04-004.^[27] In her Compliance filed on July 30, 2004, Mrs. Ang Ping explained that the issue of whether the COMELEC gravely abused its discretion in issuing the COMELEC Resolution No. 6823 may be ventilated as one of the issues to be settled in the HRET Election Protest since the non-canvassing of the "Ang Ping votes" and the proclamation of petitioner Roces were founded on COMELEC Resolution No. 6823 and were raised as the principal issues in the HRET Election Protest. This notwithstanding, the spouses Ang Ping manifested that they will "submit to any disposal which this Honorable Court may find appropriate under the above circumstances" and "would defer and will accept any order/resolution of the Honorable Court that would resolve to dismiss the instant petition/controversy, **but allowing them to pursue and concentrate their time and effort in the above-mentioned *Ad Cautela* HRET Election Protest Case, which they intend to convert to a REGULAR PROTEST case, in such an event.**"^[28]

On August 10, 2004, **this Court dismissed G.R. No. 163259 in view of the pending HRET protest** filed by Mrs. Ang Ping.^[29] The resolution eventually became final and executory.^[30] Thereafter, Mrs. Ang Ping filed in the HRET a **motion to convert the *ad cautelam* protest to a regular protest**. The HRET granted the motion on September 9, 2004.^[31]

In the HRET, Roces filed a motion to dismiss the protest, assailing in the main the **personality** of Mrs. Ang Ping to file the protest. It also raised the following issues: (1) whether the HRET has jurisdiction to review COMELEC Resolution No. 6823; (2) whether Mrs. Ang Ping can validly substitute for Mr. Ang Ping; (3) whether the protest may be resolved by mere canvass of election returns; (4) whether the proceeding is a "protest" considering that it questions proceedings held before the Manila City Board of Canvassers; (5) whether Mrs. Ang Ping could claim any right to the ballots cast considering she was not listed in the certified list of COMELEC candidates; (6) whether the petition is sufficient in form and substance despite failing to state the specific precincts protested; and (7) whether forum shopping was committed.

After extensive oral arguments, the HRET **denied Roces's motion to dismiss** on March 3, 2005. It ruled that Mrs. Ang Ping was a **proper party** to file the protest against Roces since: (1) there was no final COMELEC resolution disqualifying or denying due course to the COC of Mr. Ang Ping, thus her substitution for the latter was legally permissible under the Omnibus Election Code;^[32] (2) she was one of the candidates voted for during election day in the 3rd District of Manila;^[33] and (3) **the COMELEC Order of May 5, 2004 was of questionable validity** for the reason that: (a) it was issued in violation of its April 30, 2004 resolution setting the promulgation for May 5, 2004 and despite the fact that the records had not yet reached the COMELEC *en banc*;^[34] and (b) there was no prior notice and hearing in violation of Section 78 of the Omnibus Election Code.^[35] Roces's motion for reconsideration of the HRET order was denied on March 21, 2005.

Roces then filed the **present petition** for *certiorari* assailing the two preceding resolutions of the HRET.^[36] The **issues for resolution** are: (1) whether or not the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that Mrs. Ang Ping is a proper party to file the election protest despite the denial in due course and cancellation of her COC under COMELEC Resolution No. 6823; and (2) whether or not HRET has jurisdiction to review a resolution or order of the COMELEC and/or declare the same as void and disregard or set it aside.

After several months or on April 28, 2005, the COMELEC *en banc* issued a resolution denying Mr. Ang Ping's motion for reconsideration of the COMELEC's April 30, 2004 resolution for being moot and academic due to the petitioner's proclamation, Mr. Ang Ping's withdrawal of his candidacy and Mrs. Ang Ping's attempt to substitute for her husband.^[37]

We hold that the HRET did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the petitioner's motion to dismiss for the following reasons:

First. The HRET is the **sole judge** of all contests relating to the election, returns, and qualifications of the members of the House of Representatives^[38] and has the power to promulgate procedural rules to govern proceedings brought before it.^[39] This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented, and the right to decide whether that state of facts exists which confers jurisdiction, as well as all other matters which arise in the case legitimately before it.^[40] Accordingly, **it has the power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction.**^[41] One of the three essential elements of jurisdiction is that **proper parties** must be present.^[42] Consequently, **the HRET merely exercised its exclusive jurisdiction when it ruled that Mrs. Ang Ping was a proper party to contest the election of Roces.**

Second. There is no dispute that to support his motion to dismiss, **Roces offered as evidence the COMELEC resolutions denying due course to Mrs. Ang Ping's COC.** In doing so, Roces submitted to the HRET the admissibility and validity of these resolutions and the HRET cannot be faulted in reviewing the said resolutions especially **for the purpose** of determining whether Roces was able to discharge his burden of proving that Mrs. Ang Ping is not the proper party to assail his election. In passing upon the COMELEC resolutions especially for that purpose, it cannot be said that the HRET usurped the jurisdiction of the COMELEC.

On the merits of the HRET ruling, we hold that the HRET did not abuse its discretion in holding that Mrs. Ang Ping is a proper party to contest the election of Roces. Under COMELEC rules, the procedure of promulgation of a decision or resolution is as follows:

SECTION 5. *Promulgation.* — The promulgation of a decision or resolution of the Commission or a Division shall be made on a date previously fixed,

of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram.^[43]

Promulgation is important because it determines when the **reglementary period begins to toll**. In the case at bar, **Commissioner Garcilliano** fixed the promulgation of its resolution whether to give due course to the candidacy of Mr. Ang Ping on May 5, 2004.

For **mysterious reasons**, the COMELEC First Division of Commissioner Garcillano did not **promulgate the resolution on May 5, 2004** in accordance with its notice of promulgation. **In violation of the abovesited rule, and despite the deferment of the promulgation by Commissioner Borra to a date to be set by the COMELEC First Division**, the resolution was deemed "promulgated" by the COMELEC on **April 30, 2004** when it was filed with the clerk of court. The **April 30, 2004** COMELEC resolution was received by Mr. Ang Ping's counsel only on **May 8, 2004**.^[44]

The mysterious April 30, 2004 resolution was thereafter used to run roughshod over the rights of the Ang Pings. Thus, on May 5, 2004, the COMELEC First Division of Commissioner Garcilliano denied Mr. Ang Ping's motion to dismiss. Allegedly, Mr. Ang Ping's motion was filed after the April 30, 2004 resolution.

To make matters worse, the COMELEC *en banc* **usurped the jurisdiction of the COMELEC First Division when it issued Resolution No. 6823 on May 8, 2004** which ordered the deletion of Mr. Ang Ping's name from the Certified List of Candidates and denied the spouses Ang Ping's motions to withdraw and substitute despite the fact that: (1) the reglementary period of Mr. Ang Ping to appeal had **not yet expired**; and (2) Mr. Ang Ping had **filed a motion for reconsideration** of the preceding order on **May 10, 2004 within the five-day reglementary period**. **Nowhere is it provided in the law that the COMELEC en banc has the power to assume jurisdiction motu proprio over a petition to deny due course pending before a division of the Commission.** Diametrically opposed thereto are the provisions of the Constitution and COMELEC Rules of Procedure which provide that **motions for reconsideration** of the COMELEC division's decisions, resolutions, orders or rulings **must first be filed in the Divisions before the Commission en banc may take cognizance thereof, viz.:**

SECTION 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.**^[45]

SECTION 3. *The Commission Sitting in Divisions.* — **The Commission shall sit in two (2) Divisions to hear and decide** protests or petitions in ordinary actions, **special actions**, special cases, provisional remedies, contempt and special proceedings except in accreditation of citizens' arms of the Commission.^[46]

SECTION 5. *How Motion for Reconsideration Disposed Of.* — **Upon the**